National Aeronautics and
Space Administration

Principal Center for Regulatory Risk Analysis and Communication

REGULATORY SUMMARY

Amendments to Spill Prevention, Control, and Countermeasures (SPCC) Rule

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Introduction

The U.S. Environmental Protection Agency (EPA) is amending certain requirements for facilities subject to the Spill Prevention, Control, and Countermeasures (SPCC) regulations. On 26 November 2008, EPA published proposed and final revisions to the SPCC regulations, including the following:

- A proposed rule (73 FR 72016) to extend the compliance dates for facilities to November 2009 and to establish new compliance dates for other industrial sectors. Comments on this proposed rule must be received by EPA by 26 December 2008.
- A final rule (73 FR 71941) to restore the definition of "navigable waters" to the definition promulgated by EPA in 1973. This ruling implemented an order issued by the U.S. District Court for the District of Columbia (D.D.C.) in American Petroleum Institute v. Johnson, 571 F. Supp. 2d 165 (D.D.C. 2008). This rule does not amend the definition of "navigable waters" in any other regulation and is effective on 26 November 2008.

On 5 December 2008, EPA issued a final rule (73 FR 74236) amending the SPCC regulations to provide increased clarity, to tailor requirements to particular industry sectors, and to streamline certain requirements for operations that are subject to the regulations. These amendments will take effect 60 on 3 February 2009.

Background

The SPCC regulations apply to owners or operators of facilities that:

- Drill, produce, store, process, refine, transfer, distribute, use, or consume oil or oil products
- Could reasonably be expected to discharge oil to U.S. navigable waters or adjoining shorelines

Additionally, facilities are subject to the rule if they have an aboveground oil storage capacity greater than 1,320 gallons or underground oil storage capacity greater than 42,000 gallons that is not subject to the underground storage tank (UST) regulations. The SPCC regulations include exemptions for the following equipment:

- Completely buried storage tanks subject to all of the technical requirements of the UST regulations (40 CFR 280 or as adopted by the state)
- Containers with a storage capacity less than 55 gallons of oil
- Parts of wastewater treatment facilities used exclusively for wastewater treatment, such as oil/water separators. Tanks used to hold oil recovered from oil/water separators in a wastewater treatment facility are subject to the SPCC regulations.
- Permanently closed containers

Summary of Amendments

The changes in the final rule issued on 5 December 2008 (73 FR 74236) are outlined in the following sections. Other sections of the amendments address regulations for farms, residential heating oil, oil production facilities, manmade structures, underground emergency diesel generator tanks at nuclear power stations, and wind turbines. Minor technical corrections also were made within the amendments.

Hot-mix Asphalt

Hot-mix asphalt (HMA) is a blend of asphalt cement (AC) and aggregate material, such as stone, sand, or gravel, that is formed into final paving products for use on roads and parking lots. The revised rule exempts HMA and HMA containers from regulation under the SPCC rules on the basis that the material is unlikely to flow as a result of the entrained aggregate, thus making it an unlikely event that the material would have the potential to reach navigable waters or adjoining shorelines. Because all types of asphalt are petroleum oil products, EPA will continue to regulate AC, asphalt emulsions, and cutbacks, which are not HMA. Storage containers solely containing HMA are not to be counted toward the facility's oil storage capacity.

Definition of Facility

To clarify the existing flexibility associated with describing a facility's boundaries, "facility" is amended in 40 CFR 112.2. The definition was amended to meet the following objectives:

- To show that only the definition of "facility" rather than the definition of "production facility" determines applicability for the purposes of Part 112
- To allow an owner or operator of a facility to separate or aggregate containers to determine facility boundaries based on such factors as ownership or operation of the buildings, structures, containers, and equipment on the site, and on the activities being conducted, property boundaries, and other relevant considerations
- To clarify the definition as pertaining to "oil waste treatment"

Facility Diagram

40 CFR 112.7(a)(3) requires that a facility diagram identify the location and contents of oil containers, connecting piping, and transfer stations. Additional flexibility is now given to this requirement, and EPA also is requiring that all fixed containers and piping, including intra-facility gathering lines and produced water containers, that are exempted from SPCC regulation now be identified on the facility diagram and marked "exempt." Including these exempted containers on the diagram facilitates the identification of hazards during a spill response. For mobile or portable containers, such as drums, the area of the facility where these containers are stored must be marked. The number and capacity of such containers may be marked on the facility diagram or described in the SPCC Plan. If the number of such containers changes, an estimate of the number, the anticipated contents, and the capacities can be included in the Plan.

Loading and Unloading Rack

To clarify the equipment subject to the provisions for facility tank car and tank truck loading and unloading racks, "loading/unloading rack" is amended to be defined as follows:

> "*Loading/unloading rack* means a fixed structure (such as a platform, gangway) necessary for loading or unloading a tank truck or tank car, which is located at a facility subject to the requirements of this part. A loading/unloading rack includes a loading or unloading arm and may include any combination of the following: pipe assemblages, valves, pumps, shut-off devices, overfill sensors, or personnel safety devices."

This definition governs whether a facility is subject to 40 CFR 112.7(h). On the basis of this definition amendment, the requirements of Section 112.7(h) only apply to areas of a regulated facility where a loading and unloading rack that meets this definition is located. Additionally, all references in the text of the requirement have been modified to refer to "loading/unloading racks" versus "loading/unloading areas." Oil production facilities and farms have been exempted from the requirements of 40 CFR 112.7(h) because the loading and unloading areas associated with oil production tank batteries and farms usually do not have the equipment described in the amended definition of a loading and unloading rack. Loading and unloading racks that meet the amended definition are required to comply with 40 CFR 112.7(h).

Tier I Qualified Facilities

In December 2006, EPA finalized amendments to the SPCC rule that allowed the owner or operator of a qualified facility to self-certify his SPCC Plan (71 FR 77266). The final rule issued on 5 December 2008 (73 FR 74236) will allow the owners and operators of a subset of qualified facilities that meet additional criteria to complete a streamlined, self-certified SPCC Plan template. This template will comprise the new Appendix G to 40 CFR 112. EPA is amending the definitions published in December 2006 so that "qualified facilities" are now referred to as "Tier II qualified facilities" and the subset to which the use of the Plan template applies are referred to as "Tier I qualified facilities." Tier I qualified facilities are those facilities that have no individual oil storage container with a capacity greater than 5,000 U.S. gallons, up to a combined container capacity of 10,000 gallons. The requirements for Tier II qualified facilities remain unchanged.

The amendments require that:

- The owner or operator of a Tier I qualified facility must examine areas where there is a reasonable possibility for equipment failure (such as where equipment is loaded or unloaded; where tank overflow, rupture, or leakage is possible; or at the location of any other equipment known to be a source of discharge) and to include in the SPCC Plan the total quantity of oil that could be discharged with the predicted direction of flow. The amendments remove the requirement for an owner or operator of a Tier I qualified facility to predict the rate of flow that could result from an equipment failure.
- EPA has combined mobile and portable container requirements with the other bulk storage container secondary containment requirements, and eliminated the requirement for containment to be "sufficiently impervious." EPA believes that most Tier I qualified facilities are small facilities with simple operations and oil storage containers located inside buildings or within pre-engineered secondary containment, thus making the requirement for containment to be "sufficiently impervious" redundant.
- The owner or operator of a Tier I qualified facility must ensure that each container is provided with a system or documented procedure to prevent overfills of containers. These containers must be regularly tested to ensure proper operation or efficacy.

General Secondary Containment

EPA is amending the general secondary containment requirements to provide clarity. With regard to determining the method, design, and capacity for secondary containment, the owner or operator need only address the typical failure mode and the most likely quantity of oil that would be discharged. Secondary containment measures to prevent a discharge to navigable waters or adjoining shorelines may be either active (those requiring deployment or other specific action by the operator) or passive (permanent installations that do not require deployment or action by the owner or operator). EPA also is amending the general secondary containment provisions to include additional examples of prevention systems for onshore facilities, including drip pans, sumps, and collection systems. Expanding the list of examples allows for increased clarity and better representation of current prevention practices.

In December 2006, EPA exempted mobile refuelers from the sized secondary containment requirements applicable to bulk storage containers (71 FR 77266). EPA is now extending the amendment to provide an exemption from the sized secondary containment requirements to non-transportation-related tank trucks at facilities subject to the SPCC rule. These non-transportation-related tank trucks include those used for short-term storage and transport of fuel, crude oil, condensate, non-petroleum, or other oils for transfer to or from bulk storage containers.

Security

EPA is amending the facility security requirements in 40 CFR 112.7(g) to allow an owner or operator of a facility to tailor security measures to the facility's specific characteristics and location. This allowance previously was extended to qualified facilities in the December 2006 amendments, but is now provided to all facilities subject to the security requirements. EPA has

modified the requirements to allow the owner or operator to describe in the SPCC Plan how the facility will do the following:

- Secure and control access to all oil handling, processing, and storage areas
- Secure master flow and drain valves
- Prevent unauthorized access to starter controls on oil pumps
- Secure out-of-service and loading and unloading connections of oil pipelines
- Address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges

A facility owner or operator is required to document in the SPCC Plan how these security measures are implemented. These requirements replace the more prescriptive fencing and other requirements found in 40 CFR 112.7(g)(1) through (5) and allow the facility owner or operator to determine how best to secure and control access to areas where a discharge to navigable waters or adjoining shorelines may originate. EPA believes that this amendment will eliminate the need for Professional Engineer (PE)-certified environmentally equivalent alternatives to the specified security requirements. Because the revised requirements apply to all facilities (excluding oil production facilities), EPA is removing the security requirements in 40 CFR 112.6(c)(3)for qualified facilities to eliminate the redundancy.

Integrity Testing

EPA is amending the requirements of 40 CFR 112.8(c)(6) and 40 CFR 112.12(c)(6) to allow for greater flexibility in complying with the bulk storage container integrity testing requirements. Specifically, the owner or operator of a facility is allowed to consult and rely on industry standards to determine the appropriate qualifications for tank inspectors and testing personnel and the type and frequency of integrity testing required for a particular container size and configuration. Essentially, this amendment extends the provisions for qualified facilities in the December 2006 amendments to all facilities subject to the integrity testing provision. To eliminate redundancy, the integrity testing requirements of 40 CFR 112.6(c)(4) have been removed. The owner or operator of a facility must:

- Test and inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made.
- Determine, in accordance with industry standards, the appropriate qualifications of personnel performing tests and inspections and the frequency and type of testing and inspections, which take into account container size, configuration, and design.

The amendments allow an owner or operator to adopt integrity testing requirements that are outlined in industry standards rather than requiring PE-certified environmental equivalence determinations. Owners or operators must still maintain comparison records, inspect the container's supports and foundations, and conduct frequent inspections of the outside of the container. Deviation from industry standards or rule provisions is still allowed; however, these alternate measures must be PE-certified equivalent environmental protections.

Animal Fats and Vegetable Oil

EPA is differentiating the integrity testing requirements in 40 CFR 112.12(c)(6) for an owner or operator of a facility that handles certain types of animal fats and vegetable oil (AFVOs). The amendment provides the PE or owner or operator that is self-certifying the SPCC Plan the flexibility to use a visual inspection program for integrity testing that is appropriate for the containers that store AFVOs and meet certain criteria in accordance with the requirements of the Food and Drug Administration (FDA) for bulk storage containers.

Proposed Changes to Compliance Dates

In the proposed rule (73 FR 72016) issued on 26 November 2008, EPA proposed to amend the dates by which facilities must prepare or amend and implement SPCC Plans. The proposed compliance dates are based on the function of the specific facilities and are provided in the tables below.

Compliance Dates for Facilities (other than a Qualified Farm or Production Facility)

Date of Start of Operation	Requirements
On or before 08/16/2002	Maintain the existing SPCC Plan Amend and implement the SPCC Plan no later than 11/20/2009
After 08/16/2002 through 11/20/2009	Amend and implement the SPCC Plan no later than 11/20/2009
After 11/20/2009	Prepare and implement an SPCC Plan before beginning operations

Compliance Dates for Qualified Facilities

Date of Start of Operation	Requirements
On or before 8/16/2002	Maintain the existing SPCC Plan Amend and implement the SPCC Plan no later than 11/20/2013
After 8/16/2002 through 11/20/2013	Amend and implement the SPCC Plan no later than 11/20/2013
After 11/20/2013	Prepare and implement an SPCC Plan before beginning operations

These proposed compliance date changes are intended to do the following:

- Provide the owner or operator of a facility the opportunity to fully understand the amendments to the SPCC rule in 2006 and 2008.
- Allow facilities time to make changes to their facilities and to their SPCC Plans as necessary to comply with the revised SPCC requirements.

Definition of Navigable Waters

EPA is amending the definition of "navigable" waters under the final rule (73 FR 71941) issued on 26 November 2008 following an order issued by the D.D.C. The court decision restored the regulatory definition of "navigable waters" promulgated by EPA in 1973. The definition has been amended as follows and is not amended in any other regulation that has been promulgated by EPA:

> The term "navigable waters" of the United States means "navigable waters" as defined in Section 502(7) of the Federal Water Pollution Control Act (FWPCA) and includes the following:
>
> (1) all navigable waters of the United States, as defined in judicial decisions prior to the passage of the 1972 Amendments of the FWPCA (Pub. L. 92-500) also known as the Clean Water Act (CWA), and tributaries of such waters;
>
> (2) interstate waters;
>
> (3) intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and
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> (4) intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

Applicability to NASA

As a result of the proposed and final amendments to the SPCC rule, National Aeronautics and Space Administration (NASA) facilities will be required to amend existing SPCC Plans in accordance with these new regulations. Facilities should continue to maintain their current SPCC Plans until individual plans are amended.